

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/PR/24/3607

Parties

Linda Carey (Applicant)

Pauline Carroll (Respondent)

136 Robroyston Road, Robroyston, G33 1JJ (House)

1. By application received by the Tribunal on 7 August 2024 the Applicant sought an order against the Respondent under Regulation 9 of the Tenancy Deposit (Scotland) Regulations 2011. The application was made under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. Following receipt of the application the Tribunal wrote to the Applicant by email on 8 August 2024 advising that applications under Rule 103 required to be made within three months of the tenancy ending. On the basis that the Applicant had stated that the tenancy ended on 12 March 2024, it appeared that the application was time barred. The Tribunal asked the Applicant to either withdraw the application or explain the legal basis on which the application could proceed. The Tribunal sent a further email to the Applicant on 2 September 2024 and requested a response no later than 16 September 2024. On 3 September 2024 the Applicant emailed the Tribunal to advise that she had not received the original request for information but would provide a response that day. The Applicant later sent four emails to the Tribunal with various documentation including a copy of her eviction notice, a copy of the tenancy agreement, correspondence from SafeDepositsScotland confirming the outcome of the tenancy deposit adjudication, and a copy invoice from K&G Roofing.
3. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall) Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic”.

4. I consider that this application is frivolous and has no reasonable prospect of success, having regard to the provisions of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). In particular, regulation 9 of the 2011 Regulations states:-

“(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”

5. The Applicant has produced a notice of eviction, confirming that she was removed from the property on 12 March 2024, which aligns with the information she has provided in her application. I can therefore conclude that the tenancy between the parties ended on, or before, 12 March 2024. In terms of Regulation 9, the deadline for lodging an application under the 2011 Regulations would have been 12 June 2024. The Applicant has not identified any legal basis upon which she believes the application can proceed and there is no provision in the 2011 Regulations that permits the Tribunal to allow an extension to the 3 month deadline. Accordingly, the application cannot be entertained by the Tribunal and must be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers may appeal to the Upper tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

R O'Hare

Ruth O'Hare, Legal Member
16 September 2024